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## MASTER SERVICES AGREEMENT

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### BETWEEN:

- (1) Prime & Modern Limited a Service Provider registered in England under number 08403368 whose registered office is at Palladium House, 1-4 Argyll Street, London, W1F 7LD ("the Service Provider") and
- (2) "The Client"

### WHEREAS:

- (1) The Service Provider provides the Services and/or Products, specified in the Schedules to this Agreement from time to time, to the Client subject to the terms and conditions of this Agreement.
- (2) The Client requires the Services set out in the Schedules to this Agreement from time to time and wishes to acquire such Services and/or Products from the Service Provider.

### 1 IT IS AGREED as follows:

- 1.1 The terms of this Agreement and the Schedules to this Agreement are subject to the Service Provider's Acceptable Use Policy which may be accessed via the following weblink [www.prime-networks.co.uk](http://www.prime-networks.co.uk).
- 1.2 Unless the context otherwise requires, each reference in this Agreement to:
  - 1.2.1 "writing", and any cognate expression, includes a reference to any communication effected by electronic or facsimile transmission or similar means;
  - 1.2.2 a statute or a provision of a statute is a reference to that statute or provision as amended or re-enacted at the relevant time;
  - 1.2.3 "this Agreement" is a reference to this Agreement and each of the Schedules as amended or supplemented at the relevant time;
  - 1.2.4 a Schedule is a schedule to this Agreement;
  - 1.2.5 a Clause or paragraph is a reference to a Clause of this Agreement (other than the Schedules) or a paragraph of the relevant Schedule; and
  - 1.2.6 a "Party" or the "Parties" refer to the parties to this Agreement.
- 1.3 The headings used in this Agreement are for convenience only and shall have no effect upon the interpretation of this Agreement.
- 1.4 All descriptions, specifications, drawings, prices, performance ratings and other information quoted or submitted by the Service Provider or included in any sales literature, quotation, price list, acknowledgement of order, invoice or other document or information issued by the Service Provider are to be deemed approximate only

(except where stated in writing to be exact) and none of such items or any part thereof shall form part of the Agreement (other than as approximations).

- 1.5 The Service Provider reserves the right to make any changes in the specifications of Hardware or Software which are required to conform with any applicable safety or other legal requirements or which do not materially affect their quality or performance.
- 1.6 Words imparting the singular number shall include the plural and vice versa.
- 1.7 References to any gender shall include the other gender.
- 1.8 References to persons shall include corporations.

### 2 One-Off Services

- 2.1 The provisions of this Clause 2 shall apply only if the Service Provider has agreed to provide One-Off Services in the Schedules to this Agreement.
- 2.2 The Service Provider will provide the One- Off Services to the Client from the Commencement Date.
- 2.3 The One-Off Services will be Remote to the extent reasonably possible. To the extent it is not reasonably possible for One-Off Services to be Remote, the One-Off Services will be delivered at the Location agreed by the Client as per the Schedules to this Agreement.

### 3 Service Provider's Obligations

- 3.1 The Service Provider will use its reasonable endeavours to provide the Services and/or Products in accordance with the estimated delivery dates communicated by the Service Provider to the Client from time to time.
- 3.2 The Service Provider shall perform its obligations under this Agreement in a reasonable manner in accordance with the provisions of this Agreement.

3.3 The Service Provider shall provide the Client with such information and advice in connection with the Services and/or Products and the provision thereof as the Client may, from time to time, reasonably require both before and during the provision of the Services and/or Products.

3.4 The Service Provider shall use reasonable endeavours to keep the Client informed of any special requirements (including, but not limited to, legislative requirements) applicable to the rendering of the Services and/or Products. To the extent necessary and appropriate, the Service Provider and the Client shall take steps to comply with any such requirements. These steps shall not otherwise alter this Agreement in any way.

#### 4 Client's Obligations

4.1 The Client will:

4.1.1 pay any fees or expenses incurred and/or any sums required by the Service Provider, if the provision of the Services and/or Products set out in the Schedules to this Agreement from time to time is delayed other than through the Service Provider's fault, at the election of the Service Provider (to be exercised in the Service Provider's sole discretion), including delay as a result of the Client's agents or representatives. The Service Provider's fees will be charged at the Service Provider's then current hourly rate. Any agreed time schedules will be deferred to a period of time to be determined in the sole and absolute discretion of the Service Provider;

4.1.2 take all reasonable precautions to protect the health and safety of the Service Provider's personnel whilst at the Location;

4.1.3 be responsible for ensuring that the Location is ready to receive the Services and/or Products concerned as specified in the Schedules to this Agreement from time to time;

4.1.4 promptly furnish the Service Provider with any information and assistance required by the Service Provider in order to provide the Services and/or Products specified in the Schedules from time to time and will ensure its employees, consultants or agents co-operate in a timely manner with the Service Provider, both before and during the provision of the Services and/or Products;

4.1.5 if the Client fails for any reason (including, without limitation, a failure by the Client to pay a Deposit specified in the Schedules to this Agreement from time to time or as a result of a delay that is not caused by the Service Provider) to complete any purchase of any Services and/or Products within the period notified to the Client at any time by the Service Provider, indemnify the Service Provider against any loss (including loss of profit), damage or cost of whatever nature suffered or incurred by the Service Provider

reasonably relating to such failure on the part of the Client including, without limitation, reasonable charges and/or expenses incurred by Third Parties retained by the Service Provider;

4.1.6 indemnify and keep the Service Provider indemnified in respect of any losses (including loss of profit), costs, damages, claims and/or expenses incurred by the Service Provider due to any claims by any Third Party arising out of any possession, use, access to or modification of the Client's computer systems by the Service Provider on the Client's instructions and/or use of any materials supplied to the Service Provider by the Client. The indemnity in this Clause 4.1.6 will survive the termination or expiry of this Agreement and any Schedules to this Agreement from time to time;

4.1.7 not copy or reproduce in any way the Documentation or any part thereof without receiving the Service Provider's prior written consent; and

4.1.8 perform such other obligations as are set out in this Agreement and the Schedules to this Agreement, or as reasonably requested by a representative of the Service Provider in a reasonable and timely manner in accordance with the provision of this Agreement.

4.2 The Client warrants that any of its representatives who enter into the Contract have the Client's authority to do so and that the Client will take responsibility for any employee, ex-employee or other person who holds themselves out to be an authorised representative of the Client.

4.3 Client shall co-operate and act in good faith towards the Service Provider and provide all technical information, assistance and access (including sufficient internet connectivity for remote access) to the Location and Equipment as may be reasonably required by the Service Provider to provide the Services and/or Products.

4.4 If the Client fails, refuses or is unable to take possession of the Services and/or Products or is unable or unwilling to permit the Service Provider to perform the Services pursuant to the Schedules to this Agreement from time to time after the Service Provider has tendered delivery or performance, then without prejudice to other rights or remedies the Service Provider will, at its sole and absolute discretion:

4.4.1 be entitled to suspend the performance of any element of or all elements of the provision of the Services and/or Products (whether related to the Schedule in question or not) in which case payment by the Client for the Services and/or Products will immediately become due whether or not an invoice has been rendered by the Service Provider; and/or

4.4.2 be entitled to terminate any element of or all elements of any Contract (whether related to the Contract in question or not)

in which case payment by the Client for the Services and/or Products will immediately become due whether or not an invoice has been rendered by the Service Provider.

Party providers will be passed on to and payable by the Client.

- 4.5 The Client shall indemnify the Service Provider for all losses (including loss of profit), costs and expenses incurred if the Client fails, refuses or is unable to take possession of the Services and/or Products or is unable or unwilling to permit the Service Provider to perform the Services pursuant to the Schedules to this Agreement from time to time after the Service Provider has tendered delivery or performance.
- 4.6 The Client shall inform and consult with the Service Provider with respect to any new computer hardware, devices and/or software which it intends to procure where such hardware, devices and/or software is to be added to the Supported Systems.
- 4.7 The Client shall allow the Service Provider and (where applicable) its personnel at all reasonable times to the Location for the purpose of providing the Services and/or Products as specified in the Schedules to this Agreement from time to time.
- 4.8 The Client shall keep the Service Provider informed of any special requirements (including, but not limited to, legislative requirements) applicable to the rendering of the Services and/or Products. To the extent necessary and appropriate, the Service Provider and the Client shall promptly take steps to comply with any such requirements. These steps shall not otherwise alter this Agreement in any way.

## 5 Fees and Payment

- 5.1 The Client shall pay the Fees to the Service Provider in accordance with this Clause 5 and the Schedules from time to time as consideration for the provision of the Services and/or Products.
- 5.2 The Service Provider will be entitled to invoice the Client at any time after signing this Agreement and any relevant Schedules to this Agreement from time to time (including for the avoidance of doubt, prior to the forthcoming anniversary of the Commencement Date of the Agreement and any relevant Schedule to this Agreement from time to time) and in the case of delivery of the Products either before or after delivery of the Products, or in the case of the supply of Services, yearly on or at any time before the Commencement Date. Unless otherwise set out in the Schedules to this Agreement, the Services will be provided on a time and material basis at the rates set out in the relevant Schedule to this Agreement from time to time and will be invoiced monthly in arrears. Such rates may be increased on an annual basis.
- 5.3 The Client acknowledges and agrees that:
  - 5.3.1 without prejudice to clause 5.9 below, the Service Provider reserves the right to levy an additional charge of up to £30 (thirty pounds) plus VAT if any cheque is not honoured or if any direct debit or BACS scheduled payment is not completed; and
  - 5.3.2 all reasonable increases to charges that are levied on the Service Provider by Third

- 5.4 All payments, including the Fees, required to be made pursuant to this Agreement and any Schedules to this Agreement from time to time by the Client together with any VAT and other expenses (without deduction, legal or equitable set off or counter claim) shall be made within 30 days of the date of the relevant invoice ("**Due Date**") in pounds sterling in cleared funds to such bank as the Service Provider may from time to time nominate, without any set-off, withholding or deduction except such amount (if any) of tax as that either Party is required to deduct or withhold by law. If the invoice in question or the Schedule to this Agreement is silent in relation to payment terms, all charges for Recurring Items will be payable monthly in advance, and all other charges will be payable within 30 days in arrears of the date of the invoice or quotation.
- 5.5 The Service Provider may vary the Fees following a site survey or audit undertaken with the Client's reasonable consent in the event that the level of Services and/or Products agreed to be provided in the Schedules to this Agreement from time to time is greater than anticipated, in which case the Service Provider will issue a new or amended Schedule to this Agreement. The Service Provider may also take into account any changes to the Client's environment and any new Services and/or Products delivered or provided since the previous anniversary of the Schedule in question, whether installed at the Location or otherwise.
- 5.6 All Fees are exclusive of VAT and all other costs, taxes, and other expenses incurred in connection with the supply of the Services and/or Products specified in the Schedules to this Agreement from time to time, for which the Client shall be additionally liable.
- 5.7 Where any payment, including any Fees, pursuant to this Agreement and any Schedules to this Agreement is required to be made on a day which is not a Business Day, it may be made on the next following Business Day.
- 5.8 Without Prejudice to Clause 4.1.5 above, where the Schedules to the Agreement specifies a Deposit, the Client shall pay accordingly. Any Deposit paid by the Client will be non-refundable and the Client hereby expressly agrees that any Deposit may be retained by the Service Provider whether or not the relevant Services and/or Products have been delivered or provided. If the Deposit is required and is not paid within 14 days of the date stated in Schedules to this Agreement, the Service Provider may, upon giving written notice to the Client, suspend delivery and/or the provision of the Services and/or Products concerned, pending payment of the Deposit. If the Deposit is not received in cleared funds within seven days of such written notice, the provisions of Clauses 4.1.5 and 5.9 will apply.
- 5.9 If the Client fails to make any payment due under this Agreement by the Due Date, then the Service Provider will be entitled to:
  - 5.9.1 suspend the performance of any element of or all elements of any Service and/or

- Product specified in the Schedules to this Agreement from time to time and the Client will fully indemnify the Service Provider for any and all losses (including loss of profit) or expenses incurred;
- 5.9.2 charge interest from the Due Date until payment is made in full, both before and after any judgement, at the rate of 3.25% per annum over the Barclays Bank Plc base rate from time to time in force; and
- 5.9.3 charge the cost of recovering such debt including any reasonable fees, charges or expenses payable to any professional adviser, collection agency or other person in relation to the debt.
- 5.10 Unless contemplated otherwise in the applicable manufacturer's warranty, the Client will be responsible for any courier delivery costs (both ways) for all Third-Party items that need to be repaired by the manufacturer and which are returned to the Service Provider by the Client for this purpose.
- 5.11 Unless otherwise agreed by the Service Provider, all Recurring Items must be paid by direct debit on the last working day of each month until the Services have been terminated by either Party in accordance with Clause 12 of this Agreement. The direct debit must be deducted within 14 days of the invoice in question. This clause constitutes advance notice of payments to be collected by direct debit.
- 5.12 Without prejudice to any other right or remedy it may have, if the Client stops the direct debit payment during any period of the Term or any subsequent renewal terms in accordance with this Agreement or if either Party terminate this Agreement in accordance with Clause 12, then the Client shall remain liable to make immediate payment for the remaining period of the agreed Term or renewal term(s) and the Service Provider shall inform the Client in writing of the remaining payment that is due to be paid to them. The Client's right to cancel the direct debit payments shall not affect the Service Provider's rights and remedies to recover funds from the Client that are owed to the Service Provider pursuant to the terms of this Agreement and the Schedules to this Agreement.
- 6 Provision of Services**
- 6.1 The Service Provider shall use reasonable endeavours to provide the Services in all material respects, in accordance with the relevant specification as set out in the Schedules to this Agreement and any service level agreement.
- 6.2 Any estimate or indication by the Service Provider as to the number of man days or man hours required by the Service Provider to undertake a specific task will be construed as being an estimate only and the Service Provider reserves the right to allocate personnel to the task in question at its absolute discretion. The Service Provider will in no circumstances be liable for a delay or for any other loss, damage or cost of whatsoever nature (including without limitation Consequential Loss) suffered or incurred by the Client where such estimate or indication is incorrect or where more senior personnel are allocated in relation to the task in question.
- 6.3 If the Location lies outside the M25, the Service Provider reserves the right, in addition to the charges agreed for the provision of the Services and/or Products, to charge its then current rates for travel, accommodation and subsistence expenses, as well as the cost of time spent travelling incurred in the provision of the Services and/or Products.
- 6.4 For the avoidance of doubt, if the Services and/or Products to be provided pursuant to the Schedules of this Agreement contemplate the provision of audit services only, the provisions relating to, inter alia, support, installation, implementation and systems integration will not apply.
- 6.5 Without Prejudice to Clause 11 below, the Client acknowledges and agrees that there may be circumstances where performance of business systems may be disrupted. In these circumstances the Service Provider will use reasonable endeavours on a time and materials basis to remedy such disruption within a reasonable period of time subject to prompt and adequate notice of such disruption by the Client.
- 7 Provision of Hardware and Software**
- 7.1 The Service Provider will supply the quantity and description of the Products set out in this Agreement.
- 7.2 Any advertising or descriptive matter of the Products produced by the Service Provider or the manufacturers or distributors of the Products any descriptions or illustrations contained in any of their catalogues or brochures are produced for the sole purpose of giving an approximate idea of the Products described in them. They shall not form part of this Agreement and should not be relied upon by the Client.
- 7.3 The Service Provider shall deliver the Products to the Location at any time after the Service Provider notifies the Client that the Products are ready. Any dates for delivery are an approximate only and the Client accepts that the actual data for delivery is dependent on the activities of manufacturers and/or distributors over whom the Service Provider has limited control.
- 7.4 An agreement by the Service Provider for the supply of any Hardware to the Client as specified in the Schedules to this Agreement may also be agreed from time to time by the Parties in writing by way of an e-mail exchange.
- 7.5 The Service Provider may deliver the Products in separate instalments. Each instalment shall be invoiced and paid for in accordance with the Schedules to this Agreement.
- 7.6 Delivery of the Products will be completed on the arrival of the Products to the Location.
- 7.7 The Client will not in any way charge by way of security for any indebtedness any of the Products which remain the property of the Service Provider or the relevant Third Party.

- 7.8 The Client acknowledges that the Contract is binding and that any Products referred to in the Agreement and any Schedules to this Agreement cannot be returned to the Service Provider even if such Products have not been opened or made use of.
- 7.9 Title to the Products will not pass to the Client until the total price payable for it and any other sums due from the Client have been received in full in cleared funds by the Service Provider.
- 7.10 Until title in the Products has passed to the Client, the Client will:
- 7.10.1 hold the Products as trustee for the Service Provider;
- 7.10.2 store the Products separately from all other goods held by the Client so that they remain immediately and readily identifiable as the Service Provider's property;
- 7.10.3 not remove, deface or obscure any identifying mark or packaging on or relating to the Products;
- 7.10.4 maintain the Products in satisfactory condition and keep them insured against all risks for their full price from the date of delivery; and
- 7.10.5 give the Service Provider such information relating to the Products as the Service Provider may require from time to time.
- 7.11 Until title to the Product passes, the Client will, upon request by the Service Provider, deliver up such of the Product as is in the possession of the Client and if the Client fails to do so forthwith the Service Provider may enter the premises owned occupied and controlled by the Client and repossess and remove the Products.
- 7.12 Without prejudice to Clause 4.4 of the Agreement above and the Schedules to this Agreement from time to time in force, if the Client fails to accept delivery of Products within one Business Day of the Service Provider notifying the Client that the Products are ready, then the Service Provider may store the Products until delivery takes place and charge the Client for all related costs and expenses (including insurance).
- 7.13 Provided that the Service Provider receives in full cleared funds, the total price payable for the Products in accordance with Clause 5 of the Agreement above, the Client is licensed to use the Products in accordance with this Agreement, the Schedules to this Agreement and/or the applicable Third-Party licence terms, and by entering into the Contract, the Client agrees to comply with and be bound by such terms. For the avoidance of doubt, the owners of the Third-Party software are the licensors of the Third-Party software and the Client's ability to access, install, possess or otherwise use the same is subject to the licence terms of such Third Parties.
- 7.14 Save where the following terms contradict the licence terms for the Third-Party Software (in which case those terms shall prevail), the Products will be licensed as follows:
- 7.14.1 the licence for the software Products will be for the duration of the Contract (until terminated), non-transferable and non-exclusive;
- 7.14.2 the Products will be used by the Client only for the purposes of the Client's own internal business;
- 7.14.3 the Client will not alter, modify, copy or adapt the Software or any part thereof;
- 7.14.4 the Client and any relevant third party will not assign, sublicense, charge or otherwise dispose of or grant rights over or out of the licence hereby granted for the Software, without the Service Provider's prior written consent (such consent not to be unreasonably withheld);
- 7.14.5 to the maximum extent permissible in law, the Client agrees not to attempt to ascertain or list the source programs or source code relating to the Software;
- 7.14.6 the Client will not, without the prior written consent of the Service Provider, use the Software as part of a computer bureau business or for a business which the Client does not at the date of the Contract carry on; and
- 7.14.7 the Client will not interfere with or attempt to circumvent the operation of any dongle or other device whose function is to prevent the unlawful copying or use of the Software.
- 7.15 Notwithstanding a description of the Client's rights as or by virtue of a "sale" (and whether made orally or in writing and whether made in their terms or in any other document) unless specifically set out otherwise in the Schedules to this Agreement from time to time, the Client's only right to use the Software is by way of a licence pursuant to this Agreement and the Contract and any licence proffered by or on behalf of the owner of the Third-Party Software.
- 8 Reselling Hardware/ Software/ Services**
- Time, Delivery, Inspection and Commencement of Risk**
- 8.1 All dates supplied by the Service Provider for the delivery, installation, implementation or testing of an element of a Product or the provision of any Service will be treated as being approximate only and are not guaranteed. Time for delivery of a Product(s) or the completion of any Service will not be of the essence. The Service Provider will use its reasonable endeavours to meet such dates, but no liability will attach to the Service Provider if such dates are not met for any reason.
- 8.2 Risk of damage to or loss of the Product will pass to the Client:
- 8.2.1 on delivery by the Service Provider to the Location; or
- 8.2.2 without prejudice to the Service Provider's rights and remedies in Clauses 4.4 and 5.9 above, if the Client fails or refuses to take

delivery, when the Product is tendered for delivery.

- 8.3 With effect from delivery and, for the avoidance of doubt, in the period until title in the Product passes to the Client, the Client is responsible for insuring the Product against loss or damage for the full cost of its replacement.
- 8.4 The Service Provider does not accept any liability for loss or damage to the Product whilst in transit to the Client unless they are carried by the Service Provider and the Service Provider is notified of such loss or damage within two days of delivery or scheduled delivery (time being of the essence).
- 8.5 Where the Service Provider agrees to remedy any fault or damage the Service Provider may, at its sole and absolute discretion, replace the Product in question in which event the Client will immediately return the damaged or faulty Products in question to the Service Provider at its own cost, without an admission as to liability or fault whatsoever.

## 9 Liability and Indemnity

- 9.1 To the maximum extent permissible in law all conditions and warranties which are to be implied by statute or otherwise by general law into this Agreement or relating to the Services and/or Products are hereby excluded.
- 9.2 The Service Provider is a mere conduit and does not warrant that the Services and/or Products are virus or error free or that they are without interruption. Any dealings the Client has with any other party including but not limited to its end users or any Third Party are solely between the Client and the other party including but not limited to its end users or any Third Party. The Service Provider is a mere conduit and is not liable under the Electronic Commerce (EC Directive) Regulations 2002 if the end user and/or Third Party use the Services or Products provided by the Service Provider to access any content which is considered to be defamatory or protected by intellectual property rights.
- 9.3 The Service Provider does not warrant that it will pro-actively detect all faults. The Client acknowledges and agrees that the Service Provider is not liable for any loss (including loss of profit) incurred by the Client due to a fault not being detected.
- 9.4 The Service Provider will in no circumstances be liable to the Client for any indirect or Consequential Loss. The Service Provider shall maintain in force professional indemnity insurance in an amount not less than £1,000,000 and shall, on the Client's written request, produce the insurance certificate giving details of cover.
- 9.5 The total liability which the Service Provider will owe to the Client and in respect of all claims under this Agreement will not exceed the lesser of the insurance cover, or 125% of the price paid by the Client in the previous 12 months in respect of the Service or Product which gave rise to the claims.
- 9.6 Nothing in this Agreement will limit the Service Provider's liability to the Client for liabilities which cannot be limited or excluded as a matter of law

including:

- 9.6.1 death or personal injury resulting from the negligence of the Service Provider, its employees, agents or subcontractors; and
- 9.6.2 fraud or fraudulent misrepresentation.
- 9.7 The Client will at all times keep the Service Provider fully and effectively indemnified against any liability, claim, loss (including loss of profit), damage or expense which:
- 9.7.1 the Service Provider, its employees, consultants, agents, subcontractors or other clients may suffer due to the negligence of or breach of contract by the Client, its employees, agents or subcontractors; and/or
- 9.7.2 any client of the Client or any Third Party dealing with the Client will claim against the Service Provider in respect of the Services and/or Products.
- 9.8 Neither party will have any liability to the other in respect of any claim under this Clause 9 unless the claiming party has given written notice of the same to the defaulting party as soon as is reasonably practicable and, in any event, no later than three months from the date on which such loss or damage arose and allowed the other party a reasonable time to remedy the default.
- 9.9 Where the Service Provider has introduced the Client to any Third Party as the supplier of any goods or services to the Client (including without limitation the provision of any finance or rental arrangement for the Products) the Service Provider gives no warranty or guarantee as to the suitability or quality of any Products and/or Services supplied or that any internet access will be uninterrupted or error free or of any particular level of availability or quality of such internet access and will not under any circumstances be liable for any interruptions or downtime of any service and the Client acknowledges that it has sole responsibility for selecting them.
- 9.10 It is acknowledged by the Client that the Fees agreed by the Service Provider and its entry into the Contract are in reliance upon the limitations of liability and disclaimers of warranties and damages set out in this Agreement and that the same form an essential basis of the agreement between the Service Provider and the Client.
- 9.11 The Client acknowledges and agrees that the allocation of risk in this Clause 9 is fair and reasonable having regard to the level of Fees payable by the Client under this Agreement the Schedules to this Agreement and is recognition of the fact that it is not within the Service Provider's control how and for what purpose the Services and/or Products are used by the Client and the Client is able to rely upon its own business insurance to bear or recover any losses under Clause 9.7. In entering into this Agreement, the Client acknowledges and confirms that it has had reasonable opportunity to take advice from its own legal advisers with regard to the existence and extent of the limitations of liability between the parties and the Client has had the opportunity to discuss these terms with the Service Provider

and amend them where possible.

9.12 The exclusions from and limitations of liability set out in this Clause 9 will be considered independently. The validity or unenforceability of any one clause or subclause of this Clause 9 will not affect the validity or enforceability of any other part of this Clause 9.

9.13 The provisions of this clause 9 will survive the termination of the whole or a part of this Agreement.

## **10 Confidentiality**

10.1 Each Party undertakes that, except as provided by Clause 10.2 or as authorised in writing by the other Party, it shall, at all times during the continuance of this Agreement and for 10 years after its termination:

10.1.1 keep confidential all Confidential Information;

10.1.2 not disclose any Confidential Information to any other party;

10.1.3 not use any Confidential Information for any purpose other than as contemplated by and subject to the terms of this Agreement;

10.1.4 not make any copies of, record in any way or part with possession of any Confidential Information; and

10.1.5 ensure that none of its directors, officers, employees, agents, sub-contractors or advisers does any act which, if done by that Party, would be a breach of the provisions of Clauses 10.1.1 to 10.1.4 above.

10.2 Either Party may disclose any Confidential Information to:

10.2.1 any sub-contractor or supplier of that Party;

10.2.2 any governmental or other authority or regulatory body; or

10.2.3 any employee or officer of that Party or of any of the aforementioned persons, parties or bodies; and

10.2.4 to such extent only as is necessary for the purposes contemplated by this Agreement (including, but not limited to, the provision of the Services), or as required by law. In each case that Party shall first inform the person, party or body in question that the Confidential Information is confidential and (except where the disclosure is to any such body under Clause 10.2 or any employee or officer of any such body) obtaining and submitting to the other Party a written confidentiality undertaking from the party in question. Such undertaking should be as nearly as practicable in the terms of this Clause 10, to keep the Confidential Information confidential and to use it only for the purposes for which the disclosure is made.

10.3 Either Party may use any Confidential Information for any purpose, or disclose it to any other person, to the extent only that it is at the date of this Agreement, or at any time after that date becomes, public knowledge through no fault of that Party. In making such use or disclosure, that Party must not disclose any part of the Confidential Information which is not public knowledge.

10.4 The provisions of this Clause 10 shall continue in force in accordance with their terms, notwithstanding the termination of this Agreement for any reason.

## **11 Force Majeure**

11.1 No Party to this Agreement shall be liable for any failure or delay in performing their obligations where such failure or delay results from any cause that is beyond the reasonable control of that Party. Such causes include, but are not limited to: power failure, internet service provider failure, industrial action, civil unrest, fire, flood, storms, earthquakes, acts of terrorism, acts of war, governmental action or any other event that is beyond the control of the Party in question.

11.2 In the event that a Party to this Agreement cannot perform their obligations hereunder as a result of force majeure for a continuous period of 3 months, the other Party may at its discretion terminate this Agreement by written notice at the end of that period. In the event of such termination, the Parties shall agree upon a fair and reasonable payment for all Services and/ Products provided up to the date of termination where such Services and/or Products have not already been invoiced and paid for. Such payment shall take into account any prior contractual commitments entered into in reliance on the performance of this Agreement.

## **12 Term and Termination**

12.1 This Agreement shall come into force on the Commencement Date. The provision of the Services and/or Products shall come into force on the dates specified in the relevant Schedules to this Agreement from time to time and shall continue for a Term of three (3) years from that date unless the relevant Schedules state otherwise, subject to the provisions of this Clause 12.

12.2 Unless terminated in accordance with this Clause 12, this Agreement and any the provision of Services and/or Products as specified in the Schedules to this Agreement from time to time will renew automatically on each anniversary of the Commencement Date in question for consecutive minimum periods of the Term stated in the relevant Schedule or if nothing is stated in the Schedule, then for 36 months commencing on the day after expiry of the Commencement Date. Either Party shall have the right to terminate this Agreement at the end of the initial 3 year term or any consecutive 36 month period by giving at least three months' prior written notice, which must, notwithstanding the provisions of Clause 12.1, be received by the recipient at least three months prior to the anniversary of the Commencement

- Date of this Agreement. By way of example and for illustration purposes only, if the anniversary of the Commencement Date of this Agreement is 15 December 2018, the notice of termination must be received by the other party by no later than 15 September 2018.
- 12.3 In the event that the Client terminates this Agreement or the Schedules to this Agreement in accordance with this Clause 12 early by providing more than three months' prior written notice prior to the expiry of the term specified in Clause 12.1, the Client shall be liable to make payment for the remainder of the term within 30 days of providing the Service Provider with the written notice.
- 12.4 Any notice of termination must be provided utilising a means of delivery that requires the recipient to sign on receipt, with such signature to serve as proof of receipt by the recipient. A failure by the sending party to obtain proof of receipt by the recipient when providing notice of termination will render that notice ineffective. If payment of any invoice from the Service Provider after the Service Provider's receipt of the notice of termination is not received by the Service Provider within 30 days of delivery, the Client's notice of termination will be rendered ineffective.
- 12.5 Each Schedule shall run independently of the others and termination of one Schedule shall not affect any other Schedules which shall continue until they expire or are terminated too.
- 12.6 In the event of termination or expiry of any Schedule in relation to provision of Services or use of Products that are not ongoing, the Client will immediately cease use of all Services and Products (and any updates of the same) and at its own expense, remove from all computers under its control all copies of Software (and updates) and return or destroy them (certifying in writing to the Service Provider that such return or destruction has taken place).
- 12.7 The Service Provider may immediately terminate this Agreement by giving written notice to the Client if:
- 12.7.1 any sum owing to Client under any of the provisions of this Agreement is not paid within 14 Business Days of the due date for payment;
- 12.7.2 the Client commits any other breach of any of the provisions of this Agreement and, if the breach is capable of remedy, fails to remedy it within 45 Business Days after being given written notice giving full particulars of the breach and requiring it to be remedied;
- 12.7.3 an encumbrancer takes possession, or where the Client is a company, a receiver is appointed, of any of the property or assets of that the Client;
- 12.7.4 the Client makes any voluntary arrangement with its creditors or, being a company, becomes subject to an administration order (within the meaning of the Insolvency Act 1986);
- 12.7.5 the Client, being an individual or firm, has a bankruptcy order made against it or, being a company, goes into liquidation (except for the purposes of bona fide amalgamation or re-construction and in such a manner that the company resulting therefrom effectively agrees to be bound by or assume the obligations imposed on the Client under this Agreement);
- 12.7.6 anything analogous to any of the foregoing under the law of any jurisdiction occurs in relation to the Client;
- 12.7.7 that Client ceases, or threatens to cease, to carry on business; or
- 12.7.8 control of the Client is acquired by any person or connected persons not having control of the Client on the date of this Agreement. For the purposes of this Clause 12, "control" and "connected persons" shall have the meanings ascribed thereto by Sections 1124 and 1122 respectively of the Corporation Tax Act 2010.
- 12.8 For the purposes of Clause 12.7.2, a breach shall be considered capable of remedy if the Client can comply with the provision in question in all respects.
- 12.9 The rights to terminate this Agreement given by this Clause 12 shall not prejudice any other right or remedy of either Party in respect of the breach concerned (if any) or any other breach.
- 13 Effects of Termination**
- 13.1 Upon the termination of this Agreement for any reason:
- 13.1.1 any sum owing by the Client to the Service Provider under any of the provisions of this Agreement shall become immediately due and payable;
- 13.1.2 all clauses which, either expressly or by their nature, relate to the period after the expiry or termination of this Agreement shall remain in full force and effect;
- 13.1.3 termination shall not affect or prejudice any right to damages or other remedy which the terminating Party may have in respect of the event giving rise to the termination or any other right to damages or other remedy which any Party may have in respect of any breach of this Agreement which existed at or before the date of termination;
- 13.1.4 subject as provided in this Clause 13 and except in respect of any accrued rights neither Party shall be under any further obligation to the other; and
- 13.1.5 each Party shall (except to the extent referred to in Clause 10.2) immediately cease to use, either directly or indirectly, any Confidential Information, and shall immediately return to the other Party any documents in its possession or control which contain or record any Confidential



Information.

- 13.2 Any expiry or termination of any Schedule (howsoever caused) will not affect any accrued rights or liabilities of either Party, nor will it affect the coming into force or the continuance in force of any provision of this Agreement which is expressly or by implication intended to come into or continue in force on or after such termination.
- 13.3 Upon expiry or termination of any Schedule for whatever reason the Client will be liable to pay all monies due under the Contract in question up until the date of expiry or termination whichever is later including but not limited to paying in full for any Services and/or Products as specified in the Schedules to this Agreement which have been ordered but not paid for by the Client including any sums in relation to which the Service Provider has provided deferred terms such as staged payments, and if such termination occurs other than at the end of any 36 month period of the Schedule in question the Client will remain liable for the entire amount of the Service Provider's Fee for that 36 month period which has not been completed.
- 13.4 At the point of termination for whatever reason, the Service Provider's obligation is strictly limited to providing the new service provider a document for handover (the only obligation of the Service Provider following termination) on the condition that the Client has provided express written consent to the Service Provider that such a document can be provided to the new service provider. If for any reason the Client requires the Service Provider to fulfil any further obligations beyond the scope of this Clause 13.4, the Service Provider reserves its express right to levy an administration fee in relation to such tasks.
- 13.5 If a Schedule expires or if the Service Provider terminates a Schedule pursuant to Clause 12, then the Client will not be entitled to any refund of the Fee or any part thereof that has been paid and will be obliged to immediately pay the Service Provider all amounts due under this Contract in accordance with the Schedules to this Agreement and Clause 5. In addition, the Service Provider will be entitled, within 30 days of the date of expiry or termination and subject to the provision of the Services and/or Products, to cease providing any or all of the Services and/or Products to the Client.
- 13.6 Without prejudice to the provisions of Clause 12, on termination or expiry of any Contract, the Service Provider will not provide any further Products warranty cover or Services to the Client under that Contract, whether in respect of Third Party Products or otherwise.
- 13.7 The Client acknowledges and agrees that the Service Provider has a general and particular lien (right of retention) over any of the Client's e-mails, access codes or other data, whether stored electronically or otherwise, in or coming into the possession of the Service Provider. If any payment remains outstanding, the Service Provider may after reasonable notice enforce such lien by sale or otherwise dealing with all or any of such items as it considers appropriate.

## **14 Suspension of provision of Services and/or Products**

- 14.1 In the event of:
  - 14.1.1 any distress, execution or other legal process being levied upon any of the Client's assets or revenues;
  - 14.1.2 the Client (being a company) admitting or being adjudged to be unable to pay its debts as they fall due or entering into or taking any step to enter into any arrangement or composition with its creditors pursuant to Part 1 Insolvency Act 1986 or otherwise or a petition being presented or an order being made or an effective resolution being passed for its winding up, except for the purposes of amalgamation or reconstruction as a solvent Service Provider, or a receiver, manager, administrative receiver, administrator, liquidator, or similar officer being appointed in respect of the whole or any part of its undertaking or assets;
  - 14.1.3 the Client (being an individual) admitting or being adjudged to be unable to pay his debts as they fall due or entering into or taking any step to enter into any arrangement or composition with his creditors pursuant to Part 8 Insolvent Act 1986 or otherwise or an order being made for his bankruptcy or receiver, manager, trustee in bankruptcy or similar officer being appointed in respect of him or any of his assets or dying or becoming mentally incapacitated;
  - 14.1.4 any member or partner of the Client (being a general partnership or limited liability partnership or unincorporated association) becoming subject to any of the events listed in Clause 14.1.2;
  - 14.1.5 the occurrence of an event in whatever county or jurisdiction which is analogous to an event listed in Clauses 14.1.1 to 14.1.4;
  - 14.1.6 the Client ceasing or threatening to cease carry on business;
  - 14.1.7 the Client ceasing or threatening to cease to exist in its present form or substantially alter its nature or composition, including but not limited to where the Client is a general partnership or a limited liability partnership, the dissolution of or change in the partners or members (as appropriate) of that partnership;
  - 14.1.8 any breach of this Agreement or any Schedules to this Agreement by the Client in relation to any element of any Contract;
  - 14.1.9 non- payment by the Client of any undisputed invoice or Fees or the undisputed portion of any invoice;
  - 14.1.10 the expiry of the Contract for Support Services or termination by the Client or the Service Provider of the provision of Support Services; or

- 14.1.11 the Service Provider reasonably suspecting that any of the events mentioned above is about to occur, the Service Provider will be entitled on written notice to the Client to:
- 14.1.11.1 suspend the performance of any element of or all elements of any Schedule (whether related to the Contract to which the provisions of Clause 14.1 apply or not); and/or
  - 14.1.11.2 terminate any element of or all elements of any Schedule (whether related to the Contract to which the provisions of Clause 15.1 apply or not).
- 14.2 In the circumstances set out in Clause 14.1 the Service Provider will be entitled to cancel the unperformed portion of the Schedule in question and:
- 14.2.1 the whole of the Fee or price payable under that Schedule or any other agreement including any sums in relation to which the Service Provider has provided deferred terms such as staged payments will be payable immediately; and
  - 14.2.2 recover as damages from the Client all loss and damage of whatever kind, including Consequential Loss, which the Service Provider may sustain with such cancellation.

## 15 Specification

- 15.1 The Service Provider warrants that:
- 15.1.1 when producing the Schedules, it has taken account of and effectively incorporated all elements of the Client's service requirements; and
  - 15.1.2 it is able to provide all of the Services described in the Schedules in accordance with all applicable descriptions, as further set out and described in the Client's service requirements.
- 15.2 The Service Provider reserves the right to make any changes to the specification in the Services and/or Products required and set out in the Schedules to this Agreement and charge for such changes which are required to conform with:
- 15.2.1 any applicable safety or other statutory requirements and which do not materially affect the quality or performance of the Agreement and the Schedules to this Agreement; and/or
  - 15.2.2 the true requirements of the Client following a site survey or audit undertaken by the Service Provider or the changing requirements of the Client during the course of the Agreement and the Schedules to this Agreement.
- 15.3 If the Services and/or Products are carried out to a specification instruction or design supplied by the Client or any Third Party on behalf of the Client or the Client does not agree with the goods or

services which the Service Provider believes are required pursuant to Clause 15.1 then:

- 15.3.1 the suitability and accuracy of the specification instruction or design will be the Client's sole responsibility; and
- 15.3.2 the Client will indemnify the Service Provider against any infringement of any Intellectual Property Rights and any loss (including loss of profit), damage or expense it may incur because of any such infringement in any country and the Client will indemnify the Service Provider against any and all loss, damage or expense in respect of any liability arising under the Consumer Protection Act 1987 by reason of the specification or design of the Services and/or Products.

## 16 Changes to Services and/or Products

- 16.1 If either Party wishes to change the scope of the Services and/or Products, it shall submit details of the requested change to the other in writing.
- 16.2 If either party requests a change to the scope or execution of the Services and/or the Products, the Service Provider shall, within a reasonable time of being requested to do so in the case of the Client requesting the change, provide a written estimate ("**Change Proposal**") to the Client of:
- 16.2.1 the likely time required to implement the change;
  - 16.2.2 any variations to the Service Provider's charges arising from the change;
  - 16.2.3 the likely effect of the change on the Schedules; and
  - 16.2.4 any other impact of the change on the terms of this Agreement or the Schedules to this Agreement.
- 16.3 If the Service Provider requests a change to the scope of the Services and/or Products, the Client shall not unreasonably withhold or delay consent to it.
- 16.4 If the Client wishes the Service Provider to proceed with the Change Proposal, the Service Provider has no obligation to do so unless and until the parties have agreed a quotation in writing on the necessary variations to its charges, the Schedules and any other relevant terms of this Agreement to take account of the change.
- 16.5 Until a Change Proposal is agreed, the Service Provider shall continue providing and performing the existing Products and/or Services under the Agreement and the Schedules to this Agreement as it was before any change was requested.
- 16.6 Notwithstanding the foregoing provisions, if the Client requires the Service Provider to provide Services and/or Products on short notice or perform emergency work, the Client agrees that it may not be practicable for the Service Provider to complete a Change Proposal and/or a quotation prior to providing or performing the Services and/or Products in question. The Service Provider will use its reasonable endeavours to provide such Services and/or Products or perform such work

and the Client acknowledges and agrees that the Service Provider is not liable for any loss (including loss of profit) incurred by the Client due to any Services and/or Products provided on short notice or any emergency work performed in accordance with this clause 16.6. Services and/or Products provided, or work performed in accordance with this clause 16.6 will be invoiced on a time and materials basis at the Service Provider's rates specified in the Change Proposal.

## **17 Warranties**

- 17.1 The Service Provider warrants to the Client that:
- 17.1.1 it has the right to provide or procure the provision of the Services and/or Products;
- 17.1.2 all Services supplied under this Agreement and the Schedules to this Agreement will be carried out with reasonable care and skill by personnel whose qualifications and experience will be appropriate for the tasks to which they are allocated; and
- 17.1.3 in relation to Support Services and/or Services it will:
- 17.1.3.1 provide such Services and/or Products in a timely and professional manner;
- 17.1.3.2 use its reasonable endeavours to provide the same in accordance with any time schedules agreed in writing between the Service Provider and the Client;
- 17.1.3.3 conform to the standards generally observed in the industry for similar services; and
- 17.1.3.4 at delivery, any Products will conform substantively to any specification given in relation thereto.
- 17.2 The warranties given by the Service Provider to the Client in respect of the Products are those which are given by the manufacturer of such Products to the Service Provider and are subject to any relevant limitations and exclusions imposed by such manufacturer. Any warranties in respect of the Third-Party Software are those set out in the applicable software licence. The Service Provider will provide the Client with details of such warranties and remedies for breach of such warranties (if available) upon request.
- 17.3 The Service Provider will not be liable for a breach of warranty if:
- 17.3.1 the Client makes or causes to be made any modifications to the Products without the Service Provider's prior written consent;
- 17.3.2 the Products are used in combination with any software or materials not supplied by the Service Provider or not recommended by the Service Provider;
- 17.3.3 the Products are used incorrectly; and/ or

17.3.4 there is an external cause or causes affecting the Products including but not limited to failure or fluctuations of electrical power, fire, flood or other natural disasters.

17.4 The Client warrants that:

- 17.4.1 it has the full capacity and authority to enter into and perform this Agreement and that this Agreement is executed by a duly authorised representative of the Client;
- 17.4.2 it has the authority to grant any rights to be granted to the Service Provider under this Agreement, including the right to provide the Products to the Service Provider as indicated in this Agreement and for the same to be used in the provision of the Services and/ or Products specified in the Schedules to this Agreement from time to time and otherwise in connection with this Agreement;
- 17.4.3 it will comply with and use the Services and/or Products in accordance with the terms of this Agreement and all applicable laws, and shall not do any act that shall infringe the rights of any third party including the publishing or transmission of any materials contrary to relevant laws or in breach of the Service Provider's Acceptable Use Policy;
- 17.4.4 it owns or has obtained valid licences, consents, permissions and rights to use, and where necessary to licence to the Service Provider, any materials reasonably necessary for the fulfilment of all its obligations under this Agreement, including any third-party licences and consents in respect of any client software; and
- 17.4.5 other than the warranties set out in this Clause 17, all conditions, warranties or other terms which might have effect between the parties or be implied or incorporated into the Agreement, the Schedules to this Agreement or any collateral contract, whether by statute, common law or otherwise, are hereby excluded, including the implied conditions, warranties or other terms as to satisfactory quality and fitness for purpose and terms which may otherwise be implied by sections 13 to 15 of the Sale of Goods Act 1979. The Service Provider makes no representation or warranty that any fault, defect, issue or similar will be fixed within a specified period of time.

## **18 The Location**

- 18.1 The Client warrants that the Location is safe and suitable for the purposes for which the Client intends to engage the Service Provider to carry out the Services.
- 18.2 The Client will:
- 18.2.1 be responsible for obtaining all licenses, consents or authorisations that may be

- necessary to enable the delivery of the Services and/or Products specified in the Schedules to this Agreement to be performed by the commencement of the Contract;
- 18.2.2 insure the Location, its contents and all occupiers (including the Service Provider's employees or contractors) against all risks unless otherwise agreed in writing;
- 18.2.3 at its own expense and in sufficient time suitably prepare the Location as requested by the Service Provider (if applicable) and afford the Service Provider or its representatives all reasonable assistance to enable the Service Provider or its representatives to fulfil their obligations under this Agreement and any Schedules to this Agreement;
- 18.2.4 provide the Service Provider with such information concerning the Location as may be required to enable the Service Provider to carry out the Services and/or Products; and
- 18.2.5 pay the Service Provider based on the hourly time charges of its consultants or employees as advised from time to time and time incurred by the consultants or employees of the Service Provider away from the Service Provider business anywhere the Client fails to keep an appointment with the Service Provider.
- 18.3 Where the Service Provider provides Support Service to the Client, the Client grants the Service Provider the right on reasonable notice during normal business hours to enter the Location from time to time or will procure such access to such premises upon which the IT Infrastructure is located for the Service Provider to inspect it for purposes of compliance with this Agreement.

## **19 Intellectual Property Rights**

- 19.1 Unless specifically set out otherwise in the Schedules to this Agreement from time to time, the Service Provider will own and be fully entitled to use in any way it deems fit any Intellectual Property Rights or intellectual property skills, techniques, materials, concepts or know-how acquired, developed or used in the course of performing the Services and any improvements made or developed during the course of the Services. For the avoidance of doubt, this will include any improvements or modifications to Software during the term of this Agreement and the Schedules to this Agreement. Nothing herein will be construed or will give effect to any transfer of right, title or interest in the Service Provider's Intellectual Property Rights.
- 19.2 All Intellectual Property Rights in the Client Materials shall remain vested in the Client or its licensors as the case may be.
- 19.3 The Client acknowledges that all Intellectual Property Rights in or relating to Third Party Software and in all related Documentation will remain the exclusive property of the owner of that Third-Party Software.

- 19.4 The ownership of and sole right to Intellectual Property Rights originated, created, produced or prepared by or on behalf of the Service Provider during the course of this Agreement and the Schedules to this Agreement or otherwise relating to the provision of the Services for the Client under this Agreement and the Schedules to this Agreement will be vested in the Service Provider from the outset and the Service Provider will be at liberty to effect and be responsible for securing such protection as it may see fit. The Intellectual Property Rights cannot be used, copied, transferred, sold or dealt with in any way without the prior written consent of the Service Provider.
- 19.5 The Client will, where appropriate, give the Service Provider all assistance in securing registration of any such Intellectual Property Rights if required by the Service Provider to do so by the Service Provider executing any assignment of any such Intellectual Property Rights but the right of the Service Provider to require such assignment shall in no way be construed as indicating that the Intellectual Property Rights are other than vested in the Service Provider in accordance with this Agreement.
- 19.6 The Client agrees with the Service Provider that it will not, without the previous written consent of the Service Provider, modify or change or alter any of the Intellectual Property Rights created by the Service Provider in the performance of this Agreement and the Schedules to this Agreement which in the opinion of the Service Provider is material to the Intellectual Property Rights or to permit any such Intellectual Property Rights to be so altered modified or varied by any other person firm or Service Provider. The Client further agrees that it will not utilise any trade marks (whether registered or not) of the Service Provider without the prior written approval of the Service Provider.
- 19.7 The Client warrants that in so far as it is necessary for the Service Provider to have use of any Products or any Intellectual Property Rights belonging to any Third Party it has all the necessary licences and rights to use such software or Intellectual Property Rights in so far as the Service Provider requires it for the provisions of its obligations under the Contract.

## **20 Security and Control**

- 20.1 The Client and the Service Provider will, during the continuance of this Agreement and the Schedules to this Agreement effect and maintain adequate security measures to safeguard the IT Infrastructure from access or use by any unauthorised person.
- 20.2 The Client will comply with all of the Service Provider's reasonable requirements and recommendations with regard to the use of the IT Infrastructure, including, without limitation, the implementation of upgrades to the IT Infrastructure, Acceptable Use Policy, specified operating system and computer hardware, implementation of cyber security measures and cyber security insurance.

## **21 No Waiver**

No failure or delay by the Service Provider in exercising any of its rights under this Agreement or the Schedules to this Agreement shall be deemed to be a waiver of that right, and no waiver by the Service Provider of a breach of any provision of this Agreement shall be deemed to be a waiver of any subsequent breach of the same or any other provision.

## **22 Further Assurance**

Each Party shall execute and do all such further deeds, documents and things as may be necessary to carry the provisions of this Agreement into full force and effect.

## **23 Costs**

Subject to any provisions to the contrary each Party to this Agreement shall pay its own costs of and incidental to the negotiation, preparation, execution and carrying into effect of this Agreement and any Schedules to this Agreement.

## **24 Set-Off**

The Client shall not be entitled to set-off any sums in any manner from payments due or sums received in respect of any claim under this Agreement or any Schedules to this Agreement or any other agreement at any time.

## **25 Assignment and Sub-Contracting**

25.1 This Agreement is personal to the Parties. The Service Provider may assign, mortgage, charge (otherwise than by floating charge) or sub-licence, assign this Agreement and/or any Contract(s) or otherwise delegate any of its rights hereunder, or sub-contract or otherwise delegate any of its obligations hereunder without the written consent of the Client. The Client will only assign this Agreement and/or any Contract(s) with the express written consent of the Service Provider, such consent not to be unreasonably withheld.

25.2 Each Party shall be entitled to perform any of the obligations undertaken by it through any other member of its group or through suitably qualified and skilled sub-contractors. Any act or omission of such other member or sub-contractor shall, for the purposes of this Agreement, be deemed to be an act or omission of the Party in question. The Service Provider will procure Products from third party manufacturers or distributors.

25.3 The Service Provider will use its reasonable endeavours to obtain terms from its sub-contractors that are equivalent to this Agreement and the Schedules to this Agreement. The Client acknowledges that it is not always possible or practicable for the Service Provider to agree equivalent terms and, in such, circumstances, the third-party provider's terms will prevail.

## **26 Relationship of the Parties**

Nothing in this Agreement shall constitute or be deemed to constitute a partnership, joint venture, agency or other fiduciary relationship between the Parties other than the contractual relationship

expressly provided for in this Agreement.

## **27 Non-Solicitation of Employees**

27.1 In order to protect the legitimate business interests of the Service Provider, the Client covenants with the Service Provider not to (except with the prior written consent of the Service Provider):

27.1.1 attempt to solicit or entice away any Restricted Person;

27.1.2 solicit, deal with or entice away any Restricted Person; and/or

27.1.3 employ or engage or otherwise facilitate the employment or engagement of any Restricted Person,

from the employment or service of the Service Provider.

27.2 The Client shall be bound by the covenant set out in Clause 27.1 during the term of this Agreement, and for a period of 12 months after termination or expiry of this Agreement.

27.3 For the purposes of this Clause 27, a Restricted Person shall mean any firm, Service Provider or person employed or engaged by the Service Provider during the term of this agreement, who has been engaged in the provision of the Services or the management of this agreement either as principal, agent, employee, independent contractor or in any other form of employment or engagement and who could damage the interests of the Service Provider if they were involved in any capacity in any business concern which competes with the business of the Service Provider.

27.4 If the Client commits any breach of this Clause 27, the Client shall, on demand, pay to the Service Provider or relevant Service Provider a sum equal to the value of the contract lost by the Service Provider as a result of the Client's breach; the recruitment costs incurred by the Supplier or relevant Service Provider in replacing such a person(s); and pay to the Service Provider or relevant Service Provider a sum equal to one year's basic salary or the annual fee that was payable by the Service Provider or relevant Service Provider to the Restricted Person.

## **28 Third Party Rights**

28.1 No part of this Agreement is intended to confer rights on any third parties and accordingly the Contracts (Rights of Third Parties) Act 1999 shall not apply to this Agreement.

28.2 Subject to this Clause 28 this Agreement shall continue and be binding on the transferee, successors and assigns of either Party as required.

## **29 Data Protection**

29.1 Both Parties will comply with all applicable requirements of the Data Protection Legislation. This Clause 29 is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation. In this Clause 29, Applicable Laws means (for so long as and to the extent that they apply to the Provider)

- the law of the European Union, the law of any member state of the European Union and/or Domestic UK Law; and Domestic UK Law means the UK Data Protection Legislation and any other law that applies in the UK.
- 29.2 The Parties acknowledge that for the purposes of the Data Protection Legislation, the Client is the data controller and the Service Provider is the data processor (where Data Controller and Data Processor have the meanings as defined in the Data Protection Legislation). The Service Provider's GDPR Privacy Policy sets out the scope, nature and purpose of their processing, the duration of their processing and the types of personal data (as defined in the Data Protection Legislation and the categories of Data Subject. A copy of the Service Provider's GDPR Privacy Policy is available on request by e-mailing Mr Mark Simons at MSimons@prime-networks.co.uk.
- 29.3 Without prejudice to the generality of Clause 29.1, the Client will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to the Service Provider for the duration and purposes of this agreement.
- 29.4 Without prejudice to the generality of Clause 29.1, the Service Provider shall, in relation to any Personal Data processed in connection with the performance by the Service Provider of its obligations under this agreement:
- 29.4.1 process that Personal Data only on the written instructions of the Client unless the Service Provider is required by Applicable Laws to otherwise process that Personal Data. Where the Service Provider is relying on laws of a member of the European Union or European Union law as the basis for processing Personal Data, the Service Provider shall promptly notify the Client of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit the Provider from so notifying the Client;
- 29.4.2 ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the Client, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);
- 29.4.3 ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential;
- 29.4.4 not transfer any Personal Data outside of the European Economic Area unless the prior written consent of the Client has been obtained and the following conditions are fulfilled;
- 29.4.5 the Client or the Service Provider has provided appropriate safeguards in relation to the transfer;
- 29.4.6 the data subject has enforceable rights and effective legal remedies;
- 29.4.7 the Service Provider complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred;
- 29.4.8 the Service Provider complies with reasonable instructions notified to it in advance by the Client with respect to the processing of the Personal Data;
- 29.4.9 assist the Client, at the Client's cost, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- 29.4.10 notify the Client without undue delay on becoming aware of a Personal Data breach;
- 29.4.11 at the written direction of the Client, delete or return Personal Data and copies thereof to the Client on termination of the agreement unless required by Applicable Law to store the Personal Data; and
- 29.4.12 maintain complete and accurate records and information to demonstrate its compliance with this Clause 29.
- 29.5 Either Party may, at any time on not less than 30 days' notice, revise this Clause 29 by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when replaced by attachment to this Agreement).
- 30 Notices**
- 30.1 All notices under this Agreement shall be in writing and be deemed duly given if signed by, or on behalf of, a duly authorised officer of the Party giving the notice.
- 30.2 Notices shall be deemed to have been duly given:
- 30.2.1 when delivered, if delivered by courier or other messenger (including registered mail) during normal business hours of the recipient; or

- 30.2.2 when sent, if transmitted by facsimile or e-mail and a successful transmission report or return receipt is generated; or
  - 30.2.3 on the fifth business day following mailing, if mailed by national ordinary mail, postage prepaid; or
  - 30.2.4 on the tenth business day following mailing, if mailed by airmail, postage prepaid.
- 30.3 In each case notices shall be addressed to the most recent address, e-mail address (with a valid read receipt), or facsimile number notified to the other Party.

**31 Entire Agreement**

- 31.1 This Agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- 31.2 Each Party acknowledges that in entering into this Agreement it does not rely on, and shall have no remedies in respect of, any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Agreement.
- 31.3 Each Party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this Agreement.
- 31.4 In the event of any inconsistencies or conflict between this Agreement and the Schedules to this Agreement, the Schedules to this Agreement shall prevail.

**32 Counterparts**

This Agreement may be entered into in any number of counterparts and by the Parties to it on separate counterparts each of which when so executed and delivered shall be an original, but all the counterparts together shall constitute one and

the same instrument.

**33 Severance**

In the event that one or more of the provisions of this Agreement is found to be unlawful, invalid or otherwise unenforceable, that / those provision(s) shall be deemed severed from the remainder of this Agreement. The remainder of this Agreement shall be valid and enforceable.

**34 Dispute Resolution**

- 34.1 The Parties shall attempt to resolve any dispute arising out of or relating to this Agreement through negotiations between their appointed representatives who have the authority to settle such disputes.
- 34.2 If negotiations under Clause 34.1 do not resolve the matter within 30 Business Days of receipt of a written invitation to negotiate, the parties will attempt to resolve the dispute in good faith through an agreed Alternative Dispute Resolution (“ADR”) procedure.
- 34.3 If the ADR procedure under Clause 34.2 does not resolve the matter within 30 Business Days of the initiation of that procedure, or if either Party will not participate in the ADR procedure, the dispute may be referred to mediation by either Party.
- 34.4 Nothing in this Clause 34 shall prohibit either Party or its affiliates from applying to a court for interim injunctive relief.

**35 Law and Jurisdiction**

- 35.1 This Agreement (including any non-contractual matters and obligations arising therefrom or associated therewith) shall be governed by, and construed in accordance with, the laws of England and Wales.
- 35.2 Subject to the provisions of Clause 34 (dispute resolution), any dispute, controversy, proceedings or claim between the Parties relating to this Agreement (including any non-contractual matters and obligations arising therefrom or associated therewith) shall fall within the jurisdiction of the courts of England and Wales.

**36 Definitions**

**IT IS AGREED** as follows:

**Definitions and Interpretation**

**In this Agreement and Schedules to this Agreement, unless the context otherwise requires, the following expressions have the following meanings:**

- “**Business Day**” means, any day (other than Saturday or Sunday) on which ordinary banks are open for their full range of normal business in London, United Kingdom;
- “**Commencement Date**” the date on which the Services and/or Products in question actually commenced;

<b>“Confidential Information”</b>	means, in relation to either Party, information which is disclosed to that Party by the other Party pursuant to or in connection with this Agreement or Schedules to this Agreement (whether orally or in writing or any other medium, and whether or not the information is expressly stated to be confidential or marked as such);
<b>“Consequential Loss”</b>	means without limitation: <ul style="list-style-type: none"> <li>(a) pure economic loss;</li> <li>(b) losses incurred by one party, any client or customer of that party or other Third Party;</li> <li>(c) loss of profits (whether categorised as direct or indirect);</li> <li>(d) losses arising from business interruption;</li> <li>(e) loss of business revenue, goodwill, anticipated savings;</li> <li>(f) losses arising from wrongful termination of this Agreement or the Schedules to this Agreement from time to time;</li> <li>(g) losses whether or not occurring in the normal course of business, wasted management or staff time; or</li> <li>(h) loss or corruption of data.</li> </ul>
<b>“Contract”</b>	means a contract for the supply of Services and/or Products, as established under the Schedules to this Agreement from time to time, to which this Agreement applies, and to include any subsequent agreement to be made between the parties from time to time;
<b>“Company Data”</b>	means any data normally accessed by the Client’s users from their PCs, other than Old E-Mail and Exchange Data
<b>“Equipment”</b>	means the devices provided by the Service Provider to the Client under this Agreement;
<b>“Fees”</b>	means the fees paid by the Client to the Service Provider as consideration for the provision of Services and/or Products as detailed in the Schedules to this Agreement from time to time;
	means password protected access via the internet by the Client’s users using their own PCs to Company Data, at any time;
<b>“Global Company Data Access”</b>	
<b>“UK Data Protection Legislation”</b>	means any data protection legislation from time to time in force in the UK including the <b>General Data Protection Regulation (GDPR)</b> (EU) 2016/679 or any successor legislation;
<b>“Deposit”</b>	means the sum (if any) specified in the Schedules to this Agreement from time to time or otherwise which the Client will be required to pay the Service Provider prior to the supply of the Services;
<b>“Documentation”</b>	means the operating manuals, user instructions, technical literature and all other related materials in eye-readable form supplied to the Client in relation to the Services and/or Products;
<b>“GDPR Privacy Policy”</b>	means the Service Provider’s GDPR Privacy Policy from time to time in force;
<b>“Hardware”</b>	means the hardware to be supplied to the Client pursuant to the Schedules to this Agreement from time to time;



<b>“Helpline Support”</b>	means the telephone and/or remote-based support which shall be provided pursuant to this Agreement as specified in the Schedules to this Agreement from time to time;
<b>“Intellectual Property Rights”</b>	means copyright, patents, know-how, trade secrets, trademarks, trade names, design rights, rights in get-up, rights in goodwill, rights in confidential information, rights to sue for passing off, domain names and all similar rights and, in each case: <ul style="list-style-type: none"> <li>(a) whether registered or not</li> <li>(b) including any applications to protect or register such rights</li> <li>(c) including all renewals and extensions of such rights or applications</li> <li>(d) whether vested, contingent or future</li> <li>(e) to which the relevant party is or may be entitled, and</li> <li>(f) in whichever part of the world existing;</li> </ul>
<b>“IT Infrastructure”</b>	means all of the Products and networks required to provide IT- related services to the Client, but excluding associated personnel, processes and documentation;
<b>“Location”</b>	the Client’s premises where the Products is located or are to be delivered or where the Services are to be provided;
<b>“On-site Support”</b>	means the on-site support services to be provided at the Location as specified in the Schedules to this Agreement from time to time;
<b>“Product”</b>	means the Products specified in the Agreement from time to time;
<b>“Recurring Item”</b>	means any item or Services or Support Service that is/are to be paid on a recurring basis;
<b>“Regular Maintenance”</b>	means the scheduled site visits made by the Service Provider for the purposes of maintaining the Products as specified in the Schedules to this Agreement from time to time;
<b>“Remote”</b>	means Services provided or carried on at a location other than the Location;
<b>“Services”</b>	means the Services specified in the Schedules to this Agreement from time to time;
<b>“Software”</b>	means the Third-Party Software and/or other software to be supplied to the Client by the Service Provider pursuant to the Agreement;
<b>“Solution”</b>	means any Products and/or Services as set out in Schedules to this Agreement;
<b>“Support Services”</b>	means the IT support services to be provided by the Service Provider to the Client as set out in the Schedules to this Agreement from time to time which shall include Helpline Support, On-site Support and Regular Maintenance;
<b>“Supported Systems”</b>	means any system from which the Service Provider will provide support as identified in the Schedules to this Agreement from time to time;
<b>“Term”</b>	means the term of this Agreement as defined in Clause 12;
<b>“Third Party”</b>	means any person, Service Provider or other body not being the Service Provider or the Client; and

**“Third Party Software”**

means the third-party client-side software or software as a service to be supplied to the Client by the Service Provider pursuant to this Agreement and the Schedules to this Agreement from time to time under the relevant Third Party’s licensing terms such as (but not limited to) the Microsoft’s SPLA programme or Sophos programme.